IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU.

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 2664 of 2005()

CC.137/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR
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PETITIONER: ACCUSED 3 TO 8
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1. A.K.NARAYANAN,65 YEARS,
SAROVARAM,P.O.BELLA,KANHANGAD,
KASARAGOD DIST.

2. K.P.RAVI,48 YEARS,
SHISHIRAM,KALLILTHAZHE,P.O.PARAL,
THALASSERY,KANNUR DISTRICT.

3. VAYAKKADI BALAKRISHNAN,
61 YEARS,VAYAKKADI HOUSE,
P.O.PALLIKUNNU,KANNUR-4.

4. ACHANDI KRISHNAN,58 YEARS,
MADATHIL VEEDU P.O.,MUNDALOOR,
PERALASSERY,KANNUR DISTRICT.

5. PALLIKKAL BALAN,63 YEARS,
ANEESH NIVAS,P.O. VARAM,
VALIYANNUR NORTH,KANNUR.

6. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,KANNUR.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENTS: COMPLAINANT & STATE
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1. FOOD INSPECTOR,
KANNUR CIRCLE.

2. STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO.2664 of 2005

Dated 29th day of November, 2006

ORDER

Petitioners are the accused nos. 3 to 8 in C.C.No.137/2005 the file of the Judicial First Class Magistrate-II, Kannur with respect to the offences under sections 16(1-A)(i) read with section 2(ia)(a)(i) and section 7(i) of the Prevention of Food Adulteration Act and Rules. They have sought for quashing the proceedings initiated against them. The prosecution allegation is that the sample of red chilli powder produced by M/s.Dinesh Foods, Kannur was allegedly found to contravene the standard specified. The contention of the petitioners is that the prosecution of the Directors of the company cannot be sustained in the absence of recitals in tune with section 17(4) of the Prevention of Food Adulteration Act and also that the complaint has been filed subsequent to the period specified as "best before use". It is seen that the sample was taken on 24-1-2004 and the date of packing was in December, 2003. "Best before use" date is six months from the date of packing as can be seen from annexure-II mahazar. The complaint was filed only

on 26-3-2005 , i.e. nine months after the expiry of the shelf life. As has been held in **State of Haryana v. Unique Farmaid P.Ltd.** (1999(2) FAC 399) the petitioners have been denied of their right under section 13(2). Hence, on the above ground itself, the prosecution cannot be sustained.

2. So also, as has been held in **Delhi Municipality v. Ram Kishan** (A.I.R. 1983 S.C.67) and **Nalin Thakur and others v. State of Maharashtra** (2004(1) FAC 68), in the absence of recitals implicating the petitioners in terms of section 17(4), the prosecution is liable to be quashed. There are no recitals in the complaint as contemplated under section 17(4). So far as the rest of the accused also the denial of the right under section 13(2) stands. Hence, the prosecution against the rest of the accused who have not taken up the matter also cannot be sustained.

In the result, the entire proceedings in C.C.No.137/2005 in the court of J.F.C.M-II, Kannur is herewith quashed. The Crl.M.C. is allowed.

Kvm/- K.R.UDAYABHANU,JUDGE.

kvm/-